

FINDING OF EMERGENCY

The Department of Transportation (Caltrans) finds that an emergency exists and that this proposed emergency regulation is necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.

Specific Facts Showing the Need for Immediate Action

The Roberti Act (Government Code Sections 54236 through 54238.9) requires surplus residential properties owned by Caltrans to be offered for sale to eligible low-and-moderate-income tenants at an affordable price. The Affordable Sales Program regulations (21 CCR §§ 1475 et. seq) were adopted in 2016 setting forth the priorities and procedures for disposal of the surplus properties. Caltrans began implementing Phase 1 Sales, consisting of 42 properties in late 2016. In early 2018 Caltrans offered Phase 1 properties for sale to current tenants, setting the sales price of the properties at the original acquisition price adjusted for inflation. Caltrans used the California Consumer Price Index (C-CPI) to calculate the adjustment.

Subsequently, the United Caltrans Tenants Association (UCT) objected to the inflation adjusted price and challenged Caltrans' authority to adjust its original acquisition price for inflation and the use of the C-CPI for that adjustment in Superior Court. UCT asserted the inflation adjustment was illegal. Caltrans contends the adjustment for inflation is required by Article XIX, section 2 of the California Constitution. A hearing was held on December 21, 2018, in the Los Angeles Superior Court (*UCT vs. Department of Transportation*, Case No. BS173007) and the court found the adjustment of the original acquisition price and the use of the C-CPI was not supported by the Affordable Sales Program regulations. The court nullified the inflation adjusted acquisition prices and indicated amendments to the regulations are necessary to permit such adjustments.

The proposed emergency regulation is the immediate action necessary to avoid serious harm to the general welfare. The court ruling impacts real estate transactions that were in progress prior to the final court ruling. While contract law obligates Caltrans to complete the sales, emergency regulations will serve to ratify the sales prices. Timelines associated with the regular rulemaking process are not conducive to the closing of current transactions. Such a process would likely result in a breach of the Phase 1 sales contracts due to the "Time is of the Essence" contractual clause. Emergency regulations are necessary to promote legitimacy of the sales, to demonstrate Caltrans' commitment to operating with transparency and integrity, and to avoid lawsuits seeking completion or rescission of the pending sales contracts.

Pursuant to Gov. Code § 11342.545, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. Delaying the sales of Phase 1 properties harms the general welfare of the community. The Legislature has expressed a need for urgency in selling the surplus properties. As part of the Roberti Act the Legislature made findings and declarations, wherein the Legislature described "a pressing and urgent need for the preservation and expansion of the low- and moderate-income housing supply." (Gov. Code, § 54235.) The Legislature also reaffirmed that "the provision of decent housing for all Californians is a state goal of the highest priority." (*Ibid.*) This emergency regulatory action is immediate and necessary to facilitate the sale of Phase 1 transactions.

Authority and Reference Citations

Authority cited: Sections 54235, 54236, 54237, 54237.5, 54238, 54238.3 and 54238.4, Government Code; and Section 118.6, Streets and Highways Code.

Reference: Sections 54236, 54237, 54237.5 and 54238, Government Code; Section 118.6, Streets and Highways Code; 24 C.F.R. Section 5.100; Sections 34240, 50052.5, 50076.5, 50079.5, 50093 and 50900, Health and Safety Code; 25 CFR 700.55; Section 817, Civil Code; Article XIX, section 2, California Constitution; and 92 Ops. Cal. Atty. Gen. 73 (2009).

Informative Digest/Policy Statement Overviews

The Roberti Act sets forth the priorities for disposing of surplus residential property for State Route 710 (SR 710) in Los Angeles County. In 1979, the Legislature reaffirmed its finding that there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income can afford, and consequently a pressing and urgent need for the preservation and expansion of the low and moderate income housing supply. The Affordable Sales Program regulations became effective July 26, 2016 and Caltrans began the unique process of selling the properties as prescribed by the Roberti Act and implementing the Affordable Sales Program regulations. Adoption of these proposed emergency regulations will allow Caltrans to continue the disposal of the surplus properties and assist Caltrans in its efforts to meet the intended goal of the Legislature of preserving and expanding the availability of low- and moderate-income housing supply.

Article XIX, section 2 of the California Constitution restricts the use of gas tax revenue and establishes the State Highway Account (SHA) as a trust account. Because the SHA is a trust account, properties purchased with SHA money but not used for transportation purposes are included in the trust. (See 92 Ops. Cal. Atty. Gen. 73 (2009).) Likewise, when those properties are sold, the appreciation of value is part of the trust. (*Id.*) The properties along the SR 710 were purchased with gas tax money and are part of the SHA trust account. While the Roberti Act authorizes the sale of these properties for less than fair market value (Gov. Code § 54235)—which deprives the SHA of the appreciation of value—it does not provide clear authority to return to the SHA less purchasing power than was expended to originally buy the properties. Caltrans believes, without clear authority to the contrary, it must adjust its original purchase price for inflation to establish a minimum sales price to prevent unlawful diversions from the SHA.

Furthermore, even if not mandated by the California Constitution, Caltrans has authority to clarify the intent of the Legislature regarding the Roberti Act. Although it is clear the Legislature intended for there to be a minimum sales price, it is not clear if the Legislature intended for it to be the historic purchase price or the dollar amount representing the purchasing power of the SHA. The Roberti Act uses the phrase “price paid...for original acquisition.” (Gov. Code, §§ 54237 & 54237.5.) This phrase could mean either the historic purchase price or the dollar amount representing the purchasing power of the SHA.

Amend:

Section 1476

- (u) **“Minimum Sales Price”** means the result of this calculation: $AP_{\text{Orig}} \times (CPI_{\text{CY}} / CPI_{\text{PY}})$. If the current fair market value is less than the minimum sales price, then the minimum

sales price shall be the current fair market value. Neither an affordable price nor a reasonable price shall be less than the minimum sales price for Remaining Phase 1 Properties.

(1) The California Department of Industrial Relations publishes the California Consumer Price Index (C-CPI) with values starting in 1955.

(2) AP_{Orig} means the price the Department paid to acquire the property.

(3) CPI_{CY} means the most recently published annual C-CPI value for All Urban Consumers as of the last day of the 120-day term of the Conditional Offer Prior to Sale.

(4) CPI_{PY} means the annual C-CPI value for All Urban Consumers for the year when the Department most recently recorded title for the property. Any property acquired before 1955 shall use the 1955 value.

This subsection defines the minimum sales price of the surplus properties and identifies how the minimum sales price is calculated.

The effect of this subsection is to fully inform and clarify how the sales price of a surplus property is determined.

The proposed emergency regulations are limited to the properties listed below and are identified under section 1476 (ee) of the proposed regulations.

(ee) **“Remaining Phase 1 Properties”** means the real property located at:

5506 Atlas Street, Los Angeles, CA
5512 Atlas Street, Los Angeles, CA
5513 Atlas Street, Los Angeles, CA
5501 Berkshire Avenue, Los Angeles, CA
5524 Kendall Avenue, Los Angeles, CA
268 Waverly Drive, Pasadena, CA
2028 Berkshire Avenue, South Pasadena, CA
705 Bonita Drive, South Pasadena, CA
773 Bonita Drive, South Pasadena, CA
801 Bonita Drive, South Pasadena, CA
815 Bonita Drive, South Pasadena, CA
816 Bonita Drive, South Pasadena, CA
823-825 Bonita Drive, South Pasadena, CA
901 Bonita Drive, South Pasadena, CA
1109 Grevelia Street, South Pasadena, CA
535 Meridian Avenue, South Pasadena, CA
1707 Meridian Avenue, South Pasadena, CA
1821 Meridian Avenue, South Pasadena, CA
863 Monterrey Road, South Pasadena, CA
885 Oneonta Drive, South Pasadena, CA
530 Orange Grove Avenue, South Pasadena, CA
534 Orange Grove Avenue, South Pasadena, CA
1101 Pine Street, South Pasadena, CA
511 Prospect Avenue, South Pasadena, CA
529 Prospect Avenue, South Pasadena, CA
533 Prospect Avenue, South Pasadena, CA
540 Prospect Avenue, South Pasadena, CA
626 Prospect Avenue, South Pasadena, CA

400 Prospect Circle, South Pasadena, CA
495 Prospect Circle, South Pasadena, CA
808 Valley View Road, South Pasadena, CA
822 Valley View Road, South Pasadena, CA

Mandate on Local Agencies or School Districts

The proposed regulations do not impose a mandate on local agencies or school districts.

Cost Estimate

The regulations involve no costs or savings to any State agency, no discretionary costs or savings to school districts, no reimbursable costs or savings to school districts under Section 17561 of Government Code, and no costs or savings in federal funding to the State. Local governments may see an increase in real property tax revenues as a result of increased sales prices of the surplus residential properties.